

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

CASE NO. 02-41


VS.

TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES

FINDINGS OF FACTS; CONCLUSIONS OF LAW
AND FINAL ORDER

James Stephen King
Administrative Law Judge
1661 International Place Drive, #300
Memphis, TN 38120
(901) 767-1234

April 21, 2003

OFFICE OF LEGAL SERVICES

APR 23 2003

**DIVISION OF
SPECIAL EDUCATION**

**FINDINGS OF FACTS; CONCLUSIONS OF LAW
AND FINAL ORDER**

NO. 02-41

This cause came to be heard on the 9th day of December, 2002. The dispute centers around the Tennessee Department of Children's Services ("DCS") use of the Student Social Security Administration benefit and Supplemental Security Income benefit. The Student was certified as eligible for Special Education services when he was remanded to DCS custody by the Anderson County Juvenile Court. DCS became the Student's representative payee for the SSA and SSI benefit. Some of the benefits were used to pay the stay at Peninsula Village. The Student contends that the use of the benefits denied him a free education as required by IDEA. The Student contends that his benefits should have been held in an account for his benefit.

FINDINGS OF FACTS

The parties stipulated many of the facts relevant to this due process hearing (see Exhibit 52)¹. The Student is currently eighteen (18) years old and lives with his mother in Oakridge, Tennessee. In 1991, the Student became eligible for social security benefits due to the disability of his mother. In August, 1994, the Student became eligible for SSI benefits. As an SSI recipient, Student is medicaid-eligible for TennCare.

On April 22, 1998, the Anderson County Juvenile Court found that the Student was delinquent with a finding of a prior conviction for assault and theft. The Juvenile Court committed the Student to the Department of Children's Services ("DCS") for an "indeterminant

¹ The Joint Stipulation of Undisputed Facts is adopted in its entirety and incorporated herein by reference as Appendix A to this opinion.

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period of time". Beginning on April 22, 1998, DCS placed the Student in youth detention centers in Scott, Hamblen and Putnam Counties.

On May 22, 1998, DCS admitted the Student to Peninsula² for diagnostic and evaluation services pursuant to Contract No. H5180³. On August 11, 1998, DCS placed the Student into Peninsula's Level III Continuum Care Program pursuant to Contract No. H2026². The Student remained in Peninsula's Level III Continuum Care Program until he was discharged from DCS custody in December, 1999.

During the 1997-1998 school year, Student attended Oakridge School. The Oakridge IEP listed his primary disability as "learning disability". On March 4, 1998, the IEP team at the Oakridge School determined that the Student was "no longer eligible for services under LD-Written Expression".

The parties have stipulated that on April 22, 1998, when the Student was committed to DCS custody, the Student was eligible for special education services due to a learning disability, mood disruption and social difficulties. On May 6, 1998, an IEP team at Oakridge School determined that the Student "is not eligible for special education services because the State criteria for IDEA eligibility was not met".

In June, 1998, the Student's representative payee for social security purposes was changed from his mother to "DIR FIN Child Service". In July, 1998, DCS began receiving the Student's

² Peninsula and Peninsula Village refers to Peninsula Psychiatric Hospital, Peninsula Psychiatric Center and/or Peninsula Village.

³ Contracts referred to are contracts between DCS and Peninsula

SSI and the Student's social security benefits. The benefits were placed in DCS's general accounts.

DCS received funds from a variety of sources, such as TennCare, the Tennessee Department of Education, general state revenue and the children's SSA and SSI benefits. These funds are not segregated into a separate account for each child, but are aggregated into DCS's general funds. DCS then provides an "accounting" listing the expenditures on behalf of the child.

DCS did not pay the Student's SSI and Student's social security benefits directly to any provider for services he received while in its custody. Providers of services were paid under their respective contracts on a per diem basis. Payments by DCS to providers of services for the Student were funded in part by the TennCare program and General State Appropriations by the Tennessee Legislature for DCS. DCS used the Student's SSI and Student's social security benefits to offset or reimburse, in part, State Appropriations used to pay providers for services to Student under the per diem contract.

CONCLUSIONS OF LAW

I. Was the Student eligible for IDEA services?

On May 6, 1998, the Oakridge School System determined that the Student did not meet the criteria for IDEA eligibility. The parent signed the Integrated Assessment Report evidencing her agreement to the finding that the Child was not eligible for IDEA services. The record does not contain sufficient evidence that the Student is eligible for IDEA services.

II. Was Peninsula Village an educational placement?

Even if the Student was eligible for services, Peninsula Village was not an educational placement. Under IDEA, a Student who is eligible for special education is entitled to a free

appropriate public education consisting of special education and related services. Related services are defined in pertinent part as:

“transportation and such developmental, corrective and other support services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitative counseling, and medical services, except that such medical services shall be for diagnostic and evaluated purposes only) as may be required to assist the Child with disability to benefit from special education” 20 U.S.C.A. §1401 (A)(22).

The regulations further provide:

If placement in a public or private residential program is necessary to provide special education and related services to a Child with disabilities, the Program, including non-medical care and room and board, must be at no cost to the Parents of the Child 34 C.F.R. §300.302.

To assess whether a residential placement is an educational placement, the Court must determine whether a full-time residential placement is necessary for educational purposes, as opposed to medical, social, or emotional problems that are separate from the learning process. Daughterty v Hamilton County School, 21 F.Supp. 2d 765, 771 (E.D. Tenn. 1998).

The critical question is whether the placement is necessary to address the Child’s particular educational disability. In Metropolitan Govt. of Nashville and Davidson County v. Tennessee Dept. of Education, 771 S.W. 2d 427 (Tenn. Ct. App. 1989), the Court of Appeals in denying reimbursement for residential placement held that a placement was not an educational placement when the “problems that went beyond his need for appropriate educational services.”

In that case, the child had been hospitalized by the parents out of a concern that he might be suicidal.

Here, the Student was not at Peninsula Village for educational reasons. The Student was in the custody of DCS pursuant to Order of the Juvenile Court. The Court remanded the Student to the custody of DCS because of the Student's delinquent behavior. DCS placed the Student at Peninsula Village first for diagnostic and evaluation purposes and subsequently for Level III Continuum of Care. Prior to the DCS placement, the Student was educated in the Oakridge School System. On March 4, 1998, the IEP Team at Oakridge School determined that the Student was no longer eligible for services under LD-Written Expression. On May 6, 1998, an IEP Team at Oakridge School determined that the Student was not eligible for special educational services because of the State's criteria for IDEA disability was not met. The record is devoid of any evidence that the Student required a residential placement in order to receive an education. In fact the evidence indicates that he was being educated in his local school system until he was placed with DCS by the Juvenile Court. The overwhelming weight of the evidence in this case establishes that the Student was placed at Peninsula Village as a result of behavioral problems and not for educational reasons. Since the placement at Peninsula Village was not educationally related the placement was not a related service for IDEA purposes.

II Was the Student denied a free appropriate education?

The Student argues that some portion of the per diem payment for Peninsula Village was attributable to educational purposes; therefore, the use of the Student's social security benefits denied the Student of a free appropriate public education and violated the Student's rights under section 504. When looking at the broad scope of the Student's request, in essence the Student is requesting that the State create a government funded savings account for the Student. In order to

become eligible for this government sponsored savings account all a child need do is become involved in delinquent behaviors and get placed in state custody. Once in custody the state will pay all the child's living expenses, room, board, medical care, and then with funds from the Social Security Administration establish a savings account to be held for the delinquent child until he turns 18 years old. Here, neither the Parents, nor the Student, supplied any of the funds that the Student contends should have been placed in a savings account for him. Those funds came from the federal taxpayers.

The rules of the State Board of Education and the Social Security Administration Regulations indicate that the Student's social security benefits may be used to cover the costs of his care. The rules of the State Board of Education, Chapter 0520-1-9-.08(2)(d) provide "a LEA may use public insurance benefit programs in which the child with a disability participates to provide or pay for services as permitted under the public insurance agency ...".

SSI benefits to children are not intended as family income. Rather, Congress intended the benefits solely to alleviate the financial burden associated with the children's disability. Mack v Secretary of Dept. of Health and Human Services, 1995 WL 507581 (Ct. Fed. Claims, 1995). The SSI program's legislative history indicates that disabled children were included in the scope of the coverage because ... "their needs are often greater than non-disabled children". Id. (Quoting H.R.Rep. No. 92-231, 92nd Cong. 2nd Sess., @ 144-145 (1972)). The Mack Court went on to say:

Herein lies no undefined, purposeless eleemosynary impulse. To the contrary, Congress specifically recognized that disabled children, solely by virtue of their disability, impose a greater financial burden on their families. The purpose of the relevant portions of the 1992 Amendments was to assist families in paying for the expenses made necessary by their children's disabilities. Mack, supra @ 4.

The Social Security Act allows a State to become a representative payee of SSI benefits. (20 CFR §404.2021(b)(7)). The regulations further allow the representative payee to “use the payment he or she receives only for the use and benefit of the beneficiary in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in the best interest of the beneficiary.” 20 CFR §416.610(b)(1994) Social Security Regulations specifically allow representative payees to use some or all the SSI benefits to pay for appropriate institutional care, as provided in 20 CFR §404.2040. That Section reads in part “(b) Institutional Care: If a beneficiary is receiving care in a federal, state or private institution because of physical or mental incapacity, current maintenance includes the customary charges made by the institution, as well as expenditures for those items which will aid in the beneficiary’s recovery or release from the institution or expenses for personal needs which will improve the beneficiary’s condition while in the institution.” The Regulations further provide:

a representative payee shall use dedicated account funds, whether deposited or permissive basis (as described in §416.546), for the benefit of the child and only for the following allowable expenses –

- (i) medical treatment and education or job skills training,
- (ii) if related to the child’s impairment(s), personal needs assistance; special equipment; housing modifications; and therapy and rehabilitation; or
- (iii) other items and services related to the child’s impairment(s) that we determine to be appropriate.

The breakdown of cost associated with the Student’s stay at Peninsula Village indicates that Social Security benefits were not used to pay for educational and related services. The total cost of services provided to the Student by Peninsula Village was \$89,096.50 (see Exhibit 54). Of this amount, \$42,785.25 was paid by TennCare for medical or treatment services (Id.). The remaining \$46,311.25 was paid by taxpayers of the State of Tennessee, with \$6,411.20

reimbursed from the Student's Social Security benefits which were supplied by the taxpayers of the United States of America (see Exhibits 33, 34, 35 and 54).

In the final analysis, the Student was in DCS custody because of the Student's delinquent behaviors. Absent those delinquent behaviors, DCS would not have been forced to place the Student in Peninsula Village. The entire cost of the Student's stay at Peninsula Village has been funded in one manner or the other by government funds. Student's Social Security benefits were not used to pay for educational services but were used to pay for medical and counseling services necessitated by the Student's behavior and were not used to pay for educational services. Upon reviewing the relevant Social Security Administration Regulations it does not appear that the purpose of the Social Security benefits was to create a savings account for juvenile delinquents but was intended to pay living expenses of the recipient. In this case, the funds were properly used to pay for counseling services of the Student which were not educationally necessary related service.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the due process hearing is dismissed with prejudice.

DCS is the prevailing party.

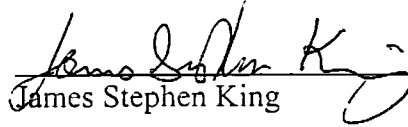
It is so ordered.


JAMES STEPHEN KING
ADMINISTRATIVE LAW JUDGE

DATED: April 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document has been sent by postage prepaid mail, this the 21st day of April, 2003, to the DCS and the Child.


James Stephen King